United Nations A/HRC/39/NGO/140

General Assembly

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Human Rights Council
Thirty-ninth session
10-28 September 2018
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

GE.18-14973(E)
1814973

Please recycle

Indian administered Kashmir & use of courts to change demography

Human rights Council at its 39th session has the advantage of two reports - one by the United Nations High Commissioner for Human Rights and the other by the UN Secretary General. The first report is exclusively on "the Situation of Human Rights in Kashmir" and was presented to the 38th session of the Council and the second report is on "Children and armed conflict" presented to the 72nd session of General Assembly. The report by UN Secretary General came out on 16 May and the report by OHCHR came out on 14 June 2018.

OHCHR report has described the Human Rights violations in "Indian Administered Kashmir" in 15 sub-headings and human rights violations in "Pakistan Administered Kashmir" have been described under five sub-headings. Secretary General has described the "use of Kashmiri children as informants and spies by national security forces" of India.

After the long-forgotten two day visit of UN Secretary General Dag Hammarskjold, from 20-22 March 1959 to assess the Kashmir situation, these two reports emanating from Geneva and New York stations of UN are an important contribution in the service of human rights.

Council members need to know that since after the above two report by OHCHR and UN Secretary General, Indian Government, has encouraged, five Public Interest petitions in the Supreme Court, to consider scrapping a 91 year old law guaranteeing special rights to the citizens (State Subjects) of the disputed State of Jammu and Kashmir and make way for the settlement of non-Kashmiris in the State.

There is a collective feeling in Kashmir that radicals in India are behind these five petitions. They want to use the Supreme Court to change the demography of Kashmir. Indian Supreme Court has a dodgy record when it came to adjudicate matters involving Kashmiri Muslims. The Court has been overtaken by 'popular sentiment' and has wronged the administration of justice.

The Constitutional history of India starts from 1948 and the constitutional history of Kashmir dates back to 1934. The Constitutional Order 1954 which brought in article 35A itself is a nullity. It can't credit or wrong the 91 year old nationality law of the people of Kashmir. Supreme Court of India does not have a jurisdiction in the matter. Supreme Court of India is fettered by the UN Resolution of 30 March 1951.

The accession of 27 October 1947 has been surrendered by the Government of India at the UN Security Council on 15 January 1948 for a UN supervised vote. Indian Government and the Government of Jammu and Kashmir at Srinagar remain under the UN Security Council caution. The three components of the caution in the Security Council Resolution of 30 March 1951 read as:

(1) "..that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

(2) "that the area from which such a constituent assembly would be elected is only a part of the whole territory of Jammu and Kashmir.

(3) "..any action that assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle."

The common inference from this caution of March 1951, is that any Presidential Orders under Indian constitution or any actions by the Kashmir assembly after March 1951, would have no merit. President of India can't create an authority for himself over and above the UN package on Kashmir.

Article 370 introduced in 1950 has missed on the fact that Indian Government had surrendered the accession for a UN Supervised vote at the UN Security Council on 15 January 1948. Article 35A of Indian Constitution on State Subject Law and article 3 of the Constitution of Jammu and Kashmir, declaring "The State of Jammu and Kashmir as integral part of the Union of India" have no merit. Both these articles were introduced post March 1951 caution of the UN Security Council and the Indian assurances given at the UN Security Council.

The case in the Supreme Court is listed on 27th August 2018 and the people living in the Indian administered Kashmir, on the Pakistani side of cease fire line, the refugees living in the four provinces of Pakistan and the Kashmiri diaspora spread all over the world, are extremely concerned about this latest development. People living in the Indian administered Kashmir have been observing peaceful shut downs. Indian security forces, are likely to use force against the unwilling people and add to the loss of life.

It was on November 22, 1947 before the matter came at UN Security Council that Britain proposed, Kashmir to be referred to ICJ. United States of America made a serious effort on 27 August 1951 to take the case to ICJ. US document "Kashmir Dispute: Future Action" was prepared in consultation with the Foreign Office of Great Britain.

It is high time that Human Rights Council takes urgent steps to save lives in Kashmir and makes its input to ensure that the Human Rights of the people, in particular the regime of rights listed in the 21 April 1948 UN Security Council Resolution are honoured by Government of India and its security forces in Kashmir. JKCHR would like to invite the attention of the Council to para 18 in the Second Report submitted by Dr. Frank P Graham UN Representative for India and Pakistan, which reads:

"18. In its answer to the questionnaire the Government of India said* (paragraph 7), "it should be noticed that the Indian troops remaining in the State of Jammu and Kashmir at the end of the period of demilitarization under this plan are over 7,000 less than the minimum stated in paragraph 8 of the Prime Minister's letter of September 11th." (2nd Report by Graham Doc S/2448, 19 December 1951).

A comparative reading of para 18 of Dr. Graham's report of 19 December 1951 with para 40 of OHCHR report of 14 June 2018, highlights how India has used its military might in Kashmir. Para 40 reads:

"In 1990, India introduced the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) to manage groups that emerged by the end of the 1980s over objections to Indian control over Kashmir. A large number of Indian security forces were subsequently deployed to Kashmir with allegations of resulting serious human rights violations. Civil society and media often cite the figure of 500,000 to 700,000 troops which would make Kashmir one of the most militarised zones in the world."

JKCHR wishes to bring to the attention of the Council, NGOs, inter-governmental delegations, and National Institutions participating in the 39th session, that if five out of the six interest groups (sixth being India) listed by the United Kingdom at the 241st meeting of the UN Security Council on 5 February 1948, decide to regroup to fight the Indian presence (which has degenerated into an occupation) in Kashmir, it would be chaos all over. It will disturb every Kashmiri living in Pakistan administered Kashmir (Azad Kashmir), residents of Gilgit and Baltistan, refugees living in Pakistan, Kashmiri diaspora and their sympathisers.

Government of India has admitted at the 533rd meeting of the UN Security Council that, "So far as the Government of India is concerned, the constituent assembly is not intended to prejudice the issues before the security Council, or to come in its way." On 9 March 1951 at the 536th meeting of the UN Security Council the representative of the Government of India has stated that, "...provision was made in the Indian Constitution for a constituent assembly for settling the details of the Kashmir constitution. Will that assembly decide the question of accession? My government's view is that, while the constituent assembly may, if it so desires, express an opinion on this question, it can take no decision on it."

Indian representative was questioned at the 548th meeting of the UN Security Council on 29 May 1951 in regard to its position on the convening of a constituent assembly in Kashmir. Indian representative Mr. Dayal reiterated that, "Let me recall what Sir Benegal Rau stated to the Council on the subject of proposed constituent assembly in Kashmir. On 1 March 1951, he said {533rd meeting}, "So far as the Government of India is concerned, the constituent assembly is not intended to prejudice the issues before the security Council, or to come in its way."

Council needs to take notice that Supreme Court of India does not have a jurisdiction to interfere in defining the title of the State Subjects. Article 370 and article 35A of the Indian constitution have no merit since after 15 January 1948 when India surrendered the accession at the UN Security Council for a UN supervised vote and after the UN Security Council caution of 30 March 1951. There is a need to defend the jurisprudence of Kashmir case and argue that Indian Supreme Court would be Coram non judice in the matter.

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Human Rights Council
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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the International Network for the Prevention of Elder Abuse, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 August 2018]

* Issued as received, in the language(s) of submission only.

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Please recycle

Social Exclusion of Older Persons Exasperates Poverty a Risk Factor for Elder Abuse

The report of the Independent Expert to the 39th Session of the HRC exposes the harmful direct and indirect impact of social exclusion violating of the human rights of older persons. The consequences of social exclusion multiplies social and economic disadvantages such as poverty in the "absence of a comprehensive universal instrument to promote and protect their human rights" and heightens the risk of violence, abuse and neglect older persons experience.

As noted by Tova Band Winterstein, "Being old" often involves being subject to biases, stigma, and discrimination (or simply: ageism). However, many older persons have "multiple disadvantages" that exacerbate this experience, particularly from a life-long perspective. For example, women "reach" old age after years of being exposed to sexism and paying the price of gender-based exclusionary social structures. In other words, the multiple marginalization of older adults is a consequence of a socially constructed process including ageism, various social and health-related disadvantages, and a lack of balance between needs and rights within these elements.

Such issues are expressed by intersectionality within and between, older adult immigrants, diverse sexual orientations people with disability, poor adults and those who experiencing abuse, There is increased interest in research practice and social policy regarding the experience and needs of these populations , along with "selective inattention" given to groups of older adults experiencing multiple forms of spiraling marginalization, alienation and exclusion, which further exacerbate inequality.

Growing evidence from gender, disability and race studies has provided support for the understanding that the subjective experiences of people with "multiple" social "disadvantages" cannot simply be conceptualized in isolation and as the "sum" of the individual aspects. It has recently been proposed to conceptualize this phenomena of multiple social disadvantages as "intersectionality", a unique human experience which goes beyond the mere "adding on" process of the individual elements that comprise one's group identity. This calls for mutual learning involving what may seem like separate disciplinary fields. Thus, intersectionality acknowledges the diversity of interests, experiences, and needs that exists among the older population as a distinct social group, within time, place and culture.

The Sustainable Development Goal's promise to leave no one behind. SD Goal 1 strives to "end poverty in all its forms everywhere". The language within the targets of SDG 1 includes "all people everywhere" (Target 1.1), people of "all ages (Target 1.2), "all men and women" (1.4), and yet, as noted by the IE as in numerous other S D Goals, it fails to provide specific protections for older persons.

Kylee Jacoby and Erica Sanders, interns in the Gray Panthers Network researched the scant attention to poverty and abuse. The study "Risk Factors for Reported Elder Abuse and Neglect: A Nine-Year Observational Cohort Study", found that "age, race, poverty, functional disability, and cognitive impairment were identified as risk factors for reported elder mistreatment. The onset of new cognitive impairment was associated with elder abuse and neglect." And found that "among sociodemographic features, non-White race, low income, and advanced age at interval inception were significantly associated with experiencing reported elder abuse and neglect," (Lachs, et al. 472). The lack of specific action strategies toward the Sustainable Development Goal 1 for the elderly community, in particular for those within that community who are non-white and women, generates elder abuse.

Poverty also results in elder abuse through the low wages of care workers. An article from The Atlantic discusses the difficult situation many home care workers face. The reality that "on average, home care aides work 34 hours a week, and make an average of $17,000 a year" and that "one in four live in households below the federal poverty line..." highlight the difficulties and struggles of home care workers (Semuels). The low pay of home care workers mixed with lack of supervision can "lead to preventable injuries and death" (Gorman). This is one of the ways poverty can be a risk of elder abuse.

According to John Wasik's article in Forbes Magazine, "4 Risk Factors For Elder Financial Abuse", they are poor physical health, cognitive impairment, difficulty in activities of daily living, and social isolation. Older persons who are in poor physical health are not putting focus on financial matters. They need the care regardless. Concerning cognitive impairment, when the ability to read a bank statement or balance checkbooks declines, financial literacy declines and are not trying to improve their economic state. In one's everyday life, if an older person has difficulty feeding, bathing, or shopping for themselves, management of their money is is in peril. Lastly, social isolation is a key factor. Older persons are often scammed into financial problems. Without a network of peers experiencing the same issues, the probability of being scammed becomes exponentially higher.

Essentially without the financial resources to maintain or provide quality care, elder persons are at risk. Caregivers sometimes they experience economic difficulties and are forced to resign from jobs and take care of older relatives,

which can result in resentment due to a loss of income. In terms of older persons, those who have fewer financial resources are at risk of neglect due to the inefficiency to pay for quality care.

The Australian literature review, "Elder Abuse in Context of Poverty and Deprivation and Emergency Department Care", found that "there is no doubt that elder abuse results in poverty," (Day 171). In studying care and elder abuse, they found that the economic distress patients are put in is often deliberate. Therefore, "education on appropriate language... is needed if victims of elder abuse are to be provided with the opportunity to discuss their situation on presentation to EDs," (Day 175). This education in language, which would give more agency to older persons experiencing elder abuse, will hopefully help "break the cycle of deprivation, poverty and abuse," (Day 175).

A HelpAge India study found that "income insecurity among older women is a leading cause of vulnerability and abuse". When a household is financially insecure, it becomes more common for neglect toward older members of the family to arise. This study enhances the argument that abuse is more common in older persons experiencing poverty.

In the developing nation of Nepal, Krishna M. Gautam, Geriatric Center in Kathmandu, wrote a status report on older persons in Nepal on both nutrition and social status, and which focused on specific research needs. Within the report he states that the majority of older persons are subsistent and living under the poverty line. He writes, "They suffer from deprivation, illiteracy, poor health and nutrition, low social status, discrimination and restriction on mobility" (9). Unfortunately because of this poverty, people enter old age in poor health and without the necessary financial means to live a quality life. Older persons cannot find the means to fulfill their basic needs like food, clothing, housing, and even water that is safe to drink.

A Center for Studies on Aging Report on aging in Arab countries, focuses on how poverty characterizes the majority of older persons, especially in developing Arab countries "where safety nets, social protection systems and pension plans are lacking or minimal" (6). In Morocco two national studies on families showed the vulnerability of older people: "high levels of poverty and illiteracy rates, lack of social protection and high rates of co-morbidity" (11). After the studies were examined, a national strategy was implemented in October 2009 focused on four main themes: "income, health, housing and dignity" (11).

This lack of clear action strategies toward eradicating poverty among older persons as elaborated upon in the Independent Expert's Report, coupled with the weakness she identified in the New Urban Agenda, are risk factors for elder abuse and highlights that dedicated human rights standards in a binding international instrument is essential if the rights of older persons to live lives of dignity are to be realized.

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Human Rights Council
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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the Fundacion Vida - Grupo Ecologico Verde and the Verein zur Forderung der Volkerverstandigung, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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1814753

Please recycle

Statement of support for the need of a human rights approach to disability including mental health**

We the undersigned non-governmental organizations and groups, specialized in human rights or rights-based approaches to the field of mental health,

Reaffirm our belief in and support of the fundamental viewpoints and rights laid out in the Universal Declaration of Human Rights and by all relevant international human rights treaties, in particular, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,

Further support that the full realization of human rights and fundamental freedoms for all contributes to the efforts to implement the Sustainable Development Goals, while recognizing that, inter alia, discrimination, stigma, corruption, violence and abuse are major obstacles in this regard,

And our belief in that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing,

Recalling the general principles reflected in the Convention on the Rights of Persons with Disabilities, namely respect for inherent dignity, individual autonomy and independence,

Reaffirming the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and emphasizing that mental health is an integral part of that right,

Noting that right to the highest attainable standard of health contains freedoms include the right to be free from non-consensual medical treatment, medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment,

Reaffirming the right of everyone – without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status – to be guaranteed the full enjoyment of their human rights and fundamental freedoms, without discrimination of any kind,

Having noted and confirm the need for a human rights-based approach to disability which is widely lacking in the field of mental health – which in fact largely still is subjected to old-fashioned stereotypes in contrast to the actual consideration of human rights, something which has been described as "unlawful use of the law to dominate and discriminate, and its conversion into a threat to the enjoyment of rights,"

Want to acknowledge and express support of the HRC, the OHCHR and the United Nations High Commissioner for Human Rights, and other United Nations agencies such as the WHO and the member states who are spearheading and supporting the drive for an actual implementation of human rights in mental health,

We the undersigned particularly note and support the findings and recommendations formulated in the report "Mental Health and Human Rights" of the United Nations High Commissioner for Human Rights (A/HRC/39/36), which laid out that:

i. States should re-examine the biomedical approach to mental health, which maintains the imbalance of power between practitioners and users of mental health services, through a collective process that includes all stakeholders.

ii. States should ensure that all health care and services, including all mental health care and services, are based on the free and informed consent of the individual concerned, and that legal provisions and policies permitting the use of coercion and forced interventions, including involuntary hospitalization and institutionalization, the use of restraints, psychosurgery, forced medication, and other forced measures aimed at correcting or fixing an actual or perceived impairment, including those allowing for consent or authorization by a third party, are repealed.

iii. States should implement people-centred and human rights-based support and services, including on mental health, which are community-based, participatory and contextually and culturally respectful and which enable and facilitate participation in society.

iv. States should strengthen data-collection efforts and undertake and invest in evidence-based and participatory research, inclusive of users of these services and of persons with psychosocial disabilities, in order to: identify the multiple and intersecting forms of discrimination operating in the context of mental health and evaluate the impact of services; and design and make available accessible and affordable non-coercive spaces, support and respite, respectful of the individual's free and informed consent.

v. States should revise and adopt legislation to combat stigma and discrimination against users of mental health services, persons with mental health conditions and persons with psychosocial disabilities.

vi. States should ensure that users of mental health services and persons with psychosocial disabilities have access to justice, including through maintaining their legal capacity within proceedings to challenge human rights violations in mental health contexts, and ensure that redress and reparation is provided for the individual while addressing systemic change through legal and policy reform and capacity-building.

vii. States should design and implement policies and programmes addressing the underlying determinants of mental health — among others, multiple and intersecting forms of discrimination, the right to social protection, and every aspect of the root causes of mental health including physical health.

viii. States should adopt immediate steps towards deinstitutionalization, by developing action plans in a participatory manner, and using the maximum of their available resources, including through international cooperation.

ix. All States parties to the Convention on the Rights of Persons with Disabilities should undertake a review of their obligations before adopting legislation or instruments that may contradict their obligations to uphold the rights of persons with disabilities.

**Állampolgári Bizottság az Emberi Jogokért Alapítvány (HUNGARY), Állampolgári Bizottság az Emberi Jogokért Közép-Európa Alapítvány (HUNGARY), ASD Filippide - Siracusa (ITALY), Asoc. Colombianos por el Mundo (SPAIN), Asociacion FOARE (SPAIN), Association UMDPL (UKRAINE), Bulgarian Helsinki Committee (BULGARIA), Bürgerkommission für Menschenrechte (AUSTRIA), CCHR Israel - עמותת מגן לזכויות אנוש(ISRAEL), CCHR Russia - Гражданская комиссия по правам человека (RUSSIA), CCHR Switzerland (SWITZERLAND), Citizens Commission on Human Rights Belgium (BELGIUM), Citizens Commission on Human Rights Europe (DENMARK), Citizens Commission on Human Rights United Kingdom (GREAT BRITAIN), Citizens' Watch (RUSSIA), Comision Ciudadana de Derechos Humanos (SPAIN), Commission des Citoyens pour les Droits de l'Homme (FRANCE), Cooperativa Sociale Agape - Ragusa (ITALY), Corporacion Vida SILOE (SPAIN), Department European Neighbourhood and Integration Policy, Ludwig Boltzmann Institute of Human Rights - BIM (AUSTRIA), Fundación para la Mejora de la Vida, la Cultura y la Sociedad (SPAIN), Galebevægelsen Sønderjylland (Danish madness movement, regional) (DENMARK), Habeas Corpus (CZECH REPUBLIC), Helsinki Association Armenia (ARMENIA), Helsinki Citizens' Assembly-Vanadzor (ARMENIA), Helsinki Committee of Armenia (ARMENIA), Helsinki Foundation for Human Rights (POLAND), Human Rights Center of Azerbaijan (AZERBAIJAN), Human Rights Monitoring Institute (LITHUANIA), Human Rights Movement "Bir Duino-Kyrgyzstan"/ FIDH (KYRGYZSTAN), Kansalaisten Ihmisoikeuskomissio (FINLAND), Kazakhstan International Bureau for Human Rights and the Rule of Law (KAZAKHSTAN), Kommission für Verstöße der Psychiatrie (GERMANY), Kommittén för Mänskliga Rättigheter (KMR) (SWEDEN), Legal policy research Center (KAZAKHSTAN), Liga lidských práv / League of Human Rights (CZECH REPUBLIC), Macedonian Helsinki Committee (MACEDONIA), Medborgernes Menneskerettighedskommission (DENMARK), Mládež za lidská práva, z.s. (CZECH REPUBLIC), Nederlands Comité voor de Rechten van de Mens (NETHERLANDS), Občanská komise za lidská práva (CZECH REPUBLIC), Pro bono alliance (CZECH REPUBLIC), Protection of Rights without Borders (ARMENIA), Public Association «Dignity» (KAZAKHSTAN), Public Verdict Foundation (RUSSIA), SOP Svaz pacientů ČR (Czech Association of Patients) (CZECH REPUBLIC), SOS Tutelles-Curatelles (SWITZERLAND), Telefono Viola Sicilia (ITALY), The Netherlands Helsinki Committee (NETHERLANDS), Unie příznivců Tradiční čínské medicíny (Union of Proponents of Traditional Medicine) (CZECH REPUBLIC), Vzdelanie a Prosperita, o.z. (SLOVAKIA), Women of the Don (RUSSIA), NGOs without consultative status, also share the views expressed in this statement.